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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/927,827	08/10/2001	Stanley G. Bower	38-10(15824)B	6251

7590

05/17/2004

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EXAMINER

WHITE, EVERETT NMN

ART UNIT	PAPER NUMBER
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1623

DATE MAILED: 05/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	09/927,827	BOWER ET AL.	
	Examiner	Art Unit	
	EVERETT WHITE	1623	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 27 January 2004.
- 2a) ☒ This action is FINAL.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) 1-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                             | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____                                    |

### **DETAILED ACTION**

1. The amendment filed January 27, 2004 has been received, entered and carefully considered. The amendment affects the instant application accordingly:
  - (A) Comments regarding Office Action have been provided drawn to:
    - (i) 102(b) rejection, which has been maintained for the reasons of record;
    - (ii) restriction requirement, which has been maintained for the reasons of record.
2. Claims 1-21 are pending in the case.
3. The text of those sections of Title 35, U. S. Code not included in this action can be found in a prior Office action.

### ***Election/Restrictions***

4. Applicant's election of Group XXIX comprising Claim 21, in Paper No. 5 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).
5. Applicant's arguments filed January 27, 2004 have been fully considered but they are not persuasive. Applicants traverse the response in the last Office Action to the restriction requirement as being an election without traverse and requests reconsideration and reversal of the holding that the election was made without traverse. Applicants appear to argue against the rejection on the ground that the policy behind such a restriction requirement is arbitrary and applied without regard to the true scope of the invention. The Examiner acknowledges Applicants broad statements regarding the restriction requirement in their response filed January 27, 2004 and invites Applicants attention to Chapter 800 of the MPEP for details regarding PTO's policy for restriction requirements. It is noted that Applicants still fail to distinctly and specifically point out the supposed errors in the restriction requirement. Accordingly, the restriction requirement is still deemed proper and is therefore made FINAL.

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6. Claims 1-20 are drawn to an invention nonelected with traverse in Paper No. 5. A complete reply to a final rejection must include cancelation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

### ***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claim 21 is rejected under 35 U.S.C. 102(b) as being anticipated by Soberon-Chavz (US Patent No. 5,443,980).

9. Applicant's arguments filed January 27, 2004 have been fully considered but they are not persuasive. Applicants argue against the rejection on the ground that the instantly claimed invention is distinguished from the Soberon-Chavez disclosure in that Applicants' invention is directed to improvement of xanthan gum, per se, by reducing co-produced proteins which can have a diminishing effect on desired properties of xanthan gum. Applicants argue that not only does Soberon-Chavez not disclose reducing co-produced proteins, but Soberon-Chavez actually teaches away from Applicants' invention by teaching only the production of proteins in xanthan gum. Applicants argument is not persuasive. What desired properties of xanthan gum are Applicants referring to? In response to Applicant's argument that the reference fails to show certain features of applicant's invention, it is noted that the features upon which Applicant relies (i.e., desired properties of xanthan gum) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Applicants arguments appear to be based on a xanthan gum composition, which contains proteins or does not contain certain types of proteins. However, the claims as written are directed only to a xanthan gum, not a xanthan gum composition. The activity of other components (i.e. proteins) does not

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effect the patentability of the xanthan gum, per se, or the instant claim does not set forth how the activity of the proteins changes xanthan gum, structurally or physically, which is distinct from the xanthan gum of the prior art. Accordingly, the rejection of Claim 21 under 35 U.S.C. 102(b) as being anticipated by the Soberon-Chavz patent is maintained for the reasons of record.

### ***Summary***

10. Claim 21 is rejected; Claims 1-20 are withdrawn from consideration as being directed to nonelected inventions.

### ***Conclusion***

11. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

### ***Examiner's Telephone Number, Fax Number, and Other Information***

12. For 24 hour access to patent application information 7 days per week, or for filing applications, please visit our website at [www.uspto.gov](http://www.uspto.gov) and click on the button "Patent Electronic Business Center" for more information.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Everett White whose telephone number is (571) 272-0660. The examiner can normally be reached on Monday-Friday from 9:30 AM to 6:00 PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James O. Wilson, can be reach on (571) 272-0661. The fax phone number for this Group is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1235.



E.White



James O. Wilson  
Supervisory Primary Examiner  
**Technology Center 1600**